

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
NO. 5:12-CV-69-H

ROSE LORENZO, on behalf of            )  
herself and all others                )  
similarly situated,                    )  
  )  
    Plaintiff,                         )  
  )  
    v.                                    )  
  )  
PRIME COMMUNICATIONS, L.P., a        )  
Texas General Partnership,            )  
  )  
    Defendant.                         )

**ORDER**

This matter is before the court on defendant's motion to compel arbitration. Plaintiff has filed a response in opposition, and defendant has replied. United States Magistrate Judge Kimberly A. Swank issued a Memorandum and Recommendation ("M&R") on October 29, 2013, recommending that defendant's motion to compel arbitration be DENIED. Defendant filed objections to the M&R on November 13, 2013 [DE #66], and plaintiff filed a response [DE #68]. This matter is ripe for adjudication.

Under Rule 72(b) of the Federal Rules of Civil Procedure, a District Judge "shall make a *de novo* determination . . . of any

portion of [the M&R] to which specific written objection has been made. . . .” See also Local Civil Rule 72.4, EDNC.


Defendant objects to Judge Swank’s conclusion there is no evidence of plaintiff’s assent to the arbitration. Defendant re-iterates that (1) plaintiff admits she saw the Employee Handbook which contained an arbitration policy and (2) plaintiff continued her employment for more than a year after the Handbook was made available on the Employee Portal. The court disagrees with defendant’s assertion that this constitutes evidence of plaintiff’s agreement.

Defendant also argues that its routine requirement for employees to execute an acknowledgement form is sufficient evidence of plaintiff’s agreement. Notably, however, defendant has been unable to produce any signed acknowledgement form signed by plaintiff. Thus, the court finds this argument untenable.

A full and careful review of the M&R and other documents of record convinces the court that the recommendation of the magistrate judge is, in all respects, in accordance with the law and should be approved.

Accordingly, the court adopts the recommendation of the magistrate judge as its own; and for the reasons stated therein, the defendant's motion to compel arbitration is DENIED.

This 19<sup>th</sup> day of November 2013.

  
\_\_\_\_\_  
Malcolm J. Howard  
Senior United States District Judge

At Greenville, NC  
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